IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.545 OF 2002

The State of Maharashtra ..Applicant

Versus

Prakash Sardar ..Respondent

Shri K.V.Saste, APP for the applicant.

Shri S.R.Chitnis Senior Advocate i/by Smt.V.R.Raje for Respondent No.1.

Coram : A.S.Oka,J

Date : 1.9.2005.

PC

1. Heard learned APP for the State and the learned Senior Counsel appearing for the Respondent. The challenge in this Revision Application is to the Judgment and order dated 16th July 2002 passed by the learned Special Judge. By the impugned order, the learned Special Judge directed the prosecution to lead evidence on the point of sanction.

2. The submission of the Applicant is that an application was made by the Respondent for discharge in which submissions were made regarding the validity and legality of sanction and the order by which the application for discharge has been rejected was confirmed by this Court. The submission is that once there is an adjudication on

the question of discharge where issue regarding validity of the sanction is gone into, there was no occasion for the learned Special Judge to pass the impugned order.

3. The learned Senior Counsel appearing for the respondent has opposed the Revision Application by pointing out that the impugned order is already implemented and evidence of the sanctioning authority has been already recorded. He submitted that the Revision Application is mis-conceived and was filed without application of mind. He submitted that as a result of filing of such Revision Application, the trial has been delayed and prejudice has been caused to the respondent.

4. I have considered the submissions. From the affidavit-in-reply it appears that the Special Judge has already recorded evidence of one Madhukar S.Chaudhari in support of the sanction and the recording of evidence has been completed on 24th June 2004. While confirming the order passed by the learned Special Judge on the application for discharge, this Court observed that the issue regarding legality and validity of sanction was a matter of evidence. Even the impugned order records that the learned Special Judge had already passed an order for leading evidence by the prosecution on the point of sanction and the said order was operative

even after the application for discharge made by the Respondent was rejected.

5. In view of settled position of law, no fault can be found with the impugned order. In view of law laid down by the Apex Court in the case of Abdul Wahab Ansari V/s. State of Bihar & Ors. reported in AIR 2000 SC 3187, the learned Special Judge was bound to permit the prosecution to lead evidence on the validity of sanction so that issue regarding legality and validity of sanction can be decided immediately.

6. Perusal of the record shows that the further proceedings of the trial were not stayed by this Court. It is, however, difficult to understand why the learned Special Judge did not proceed with the case expeditiously though this Court had not granted any stay.

7. There is no merit in the Revision Application and the same is dismissed. The learned Special Judge will now proceed to decide the issue regarding the legality and validity of sanction as expeditiously as possible. All contentions of the parties in that behalf are kept open.

(A.S.Oka,J)